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No.

In the

Supreme Court of the United States

OCTOBER TERM, 1984

MORTON L. MINSKY, Individually and on behalf of all others similarly situated,

Petitioner,

vs.

AUTO DRIVEAWAY COMPANY, et al.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Can defendants who have been adjudicated guilty of a criminal price-fixing conspiracy escape civil antitrust liability under *Keogh* v. *Chicago & Northwestern Railway Co.*, 260 U.S. 156 (1922)? (Discussed *infra.*, pp. 4-5)

2. Does *Keogh* apply to rates which were fraudulently filed with and never even considered by the Interstate Commerce Commission? (Discussed, *infra.*, pp. 5-6)

3. Does *Keogh* survive post-1922 changes in the legal environment, including the substitution of competition for regulation and limitation of the ICC's authority to approve collective rate-making agreements? (Discussed *infra.*, pp. 7-10)

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AUTO DRIVEAWAY COMPANY, et al.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Morton L. Minsky prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled case on April 18, 1984. A petition for rehearing was denied on June 11, 1984.

OPINIONS BELOW

The opinion of the United States District Court for the Northern District Court is in the form of a minute order dated May 24, 1982. The District Court's minute order is not reported and is printed in the Appendix, *infra.*, at page A1.

The memorandum opinion of the Court of Appeals appears in the Appendix, *infra.*, beginning at page A2. The opinion was originally unreported, but the Court of Appeals subsequently granted a motion that it be issued as a fully citable opinion. That opinion has yet to be reported.

JURISDICTION

The judgment of the Courts of Appeals for the Seventh Circuit was entered on April 18, 1984, and a petition for rehearing was denied on June 11, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 4 of the Clayton Act, 38 Stat. 731, 15 U.S.C. § 15, printed in the Appendix, at page A7.

Section 5a of the Reed-Bulwinkle Act, 62 Stat. 472, 49 U.S.C. § 5b, printed in the Appendix, at page A7.

Section 5a of the Interstate Commerce Act, 90 Stat. 42, 49 U.S.C. § 10706(b)(2), printed in the Appendix, at page A8.

STATEMENT OF THE CASE

Respondents-defendants Auto Driveaway Co., AAAcon Auto Transport Inc., and Nationwide Auto Transporters, Inc., are engaged in the "casual driveaway" industry: they arrange for vehicles to be driven from one location to another by "casual" or nonprofessional drivers. As members of the Automotive Carriers Association ("Association") defendants submitted to the Interstate Commerce Commission ("ICC") a proposal for collective rate-making by the Association pursuant to Section 5a

of the Interstate Commerce Act, 90 Stat. 42, 49 U.S.C. § 10706(b). See Appendix, p. A8. Although this application was denied by the ICC, defendants collectively fixed their rates and filed them with the ICC, fraudulently representing that the rates had been established individually. Because the ICC took no action on those rates, they automatically became effective thirty days after submission.

Defendants' fraud was discovered and they were indicted by a federal grand jury for engaging in a combination and conspiracy to fix, raise, stabilize, and maintain rates. Defendant AAAcon pleaded *nolo contendere,* Nationwide pleaded guilty, and Auto Driveaway was tried by a grand jury and found guilty.

Petitioner-plaintiff Morton L. Minsky filed a consumer class action for treble damages under Sections 1 and 2 of the Sherman Act, 69 Stat. 282, 15 U.S.C. §§ 1 and 2, and Section 4 of the Clayton Act, 38 Stat. 731, 15 U.S.C. § 15, see Appendix, p. A7, based on defendants' adjudicated criminal antitrust violations. The district court dismissed the action, stating that plaintiff had no legal right to a rate lower than the one which had been fraudulently filed with the ICC, relying on *Keogh* v. *Chicago & Northwestern Railway Co.*, 260 U.S. 156 (1922). The United States Court of Appeals for the Seventh Circuit affirmed *per curiam* on April 18, 1984. Petition for rehearing was denied on June 11, 1984.

REASONS FOR GRANTING THE WRIT

1. Defendants Who Have Been Adjudicated Guilty Of A Criminal Price-Fixing Conspiracy Cannot Escape Civil Antitrust Liability under *Keogh*.

Keogh v. *Chicago & Northwestern Railway Co.*, 250 U.S. 156 (1922), involved a collateral attack upon rates which had been approved by the ICC after extensive hearings; the instant case does not.

In *Keogh*, the defendant railroads formed an association, agreed upon uniform rates, and submitted those rates to the ICC. Keogh, a shipper, complained to the ICC that the rates were arbitrary and unreasonable. After conducting extensive hearings, in which Keogh participated, the ICC approved the rates. Keogh then filed a federal antitrust action, alleging that the association's collective rate-making injured him by causing an increase in his rates. The district court entered judgment for the defendants, which was affirmed by the Court of Appeals and this Court.

In *Keogh*, the plaintiff made a collateral attack upon rates which had been approved by the ICC. This Court stressed the fact that "the rates complained of [had] been found by the Commission to be legal . . ." 260 U.S. at 162. The case was presented on the pleadings, and the pleadings established the fact that:

> [E]very rate complained of had been duly filed by the several carriers with the Interstate Commerce Commission; that upon such filing the rates had been suspended for investigation, upon complaint of Keogh, pursuant to the Act to Regulate Commerce, February

> 4, 1887, c. 104, 24 Stat. 379, 384, as amended; that after extensive hearings, in which Keogh participated, the rates were approved by the Commission; and that they were not made effective until after they had been so approved.

260 U.S. at 160.

The instant case does not involve a collateral attack upon an ICC determination. The rates submitted by the defendants were fraudulently filed. Whereas in *Keogh* the defendants complied fully with the regulatory procedures, the defendants in this case fraudulently violated those procedures. The Interstate Commerce Act specifies how carriers may seek approval of joint rate-making agreements. 90 Stat. 42, 49 U.S.C. § 10706(b)(2). See Appendix, p. A8. Defendants attempted to obtain such approval, but permission was denied. Defendants set their rates collectively anyway, but fraudulently represented that the rates had been established individually. The regulatory process which defendants have abused should not protect the abusive conduct from antitrust scrutiny. *California Motor Transport Co.* v. *Trucking Unlimited,* 404 U.S. 508 (1972); *Otter Tail Power Co.* v. *United States,* 410 U.S. 366 (1973).

Therefore, *Keogh* does not control the instant dispute because there is no collateral attack upon an ICC determination.

2. *Keogh* Does Not Apply To Rates Which Were Fraudulently Filed With And Never Even Considered By The Interstate Commerce Commission.

The rates involved in the instant case were not "approved" by the ICC as was the case in *Keogh*. Defen-

dants' conspiratorial rates were filed fraudulently, but after thirty days they became effective automatically. This process hardly resembles the ICC "approval" which was present in *Keogh*. The obvious distinction between rates which are expressly approved and rates which become effective automatically has been recognized by lower courts. See *e.g. Phonotele, Inc.* v. *American Telephone & Telegraph Co.*, 664 F.2d 716, 733 (9th Cir. 1981).

A similar distinction was made in *Cantor* v. *Detroit Edison Co.*, 428 U.S. 579 (1976). The Court held that the mere approval of a tariff by a state regulatory agency was insufficient "state action" to confer antitrust immunity on all conduct related to the tariff. In *Cantor*, a retailer who sold light bulbs challenged the utility's program of supplying free light bulbs to its customers. The utility defended on the ground that the program was financed by a tariff which had been approved by a state regulatory agency, and that the program was exempt from antitrust scrutiny under the "state action" doctrine. This defense was rejected on the basis that the conduct was not compelled by the state merely because the tariff was approved. *Id.* at 592-93. The facts of the instant case present an even stronger reason to subject defendant's rates to antitrust scrutiny in that they were not even approved by the Commission, as in *Cantor*, but automatically became effective with the passage of time.

Whereas judicial deference to rates which are approved by a regulatory agency can be justified, blind judicial deference to rates which were fraudulently filed cannot be justified. The petition for certiorari should be granted so that it may be determined whether the *Keogh* decision is so broad as to cover the instant facts.

3. *Keogh* Does Not Survive Post-1922 Changes In The Legal Environment, Including The Substitution Of Competition For Regulation And Limitation Of The ICC's Authority To Approve Collective Rate-Making Agreements.

The 1922 *Keogh* decision reconciled the Interstate Commerce Act (then known as the Act to Regulate Commerce) and the Sherman Act. The Court disallowed the private action for damages under the antitrust laws "because otherwise the paramount purpose of Congress — prevention of unjust discrimination — might be defeated." 260 U.S. at 163. Subsequent changes in regulatory and antitrust law indicate that the factors which supported the *Keogh* decision are no longer valid.

Congressional policy since *Keogh* has placed greater emphasis on competition and less emphasis on regulatory oversight. In 1922, when *Keogh* was decided, there was no limitation on the ICC's authority to confer antitrust immunity. In 1948, however, Congress passed the Reed-Bulwinkle Act, which established an *exclusive* method by which carriers would submit joint rate-making agreements to the ICC. 69 Stat. 472, 49 U.S.C. § 5b. See Appendix, p. A7. (Now 90 Stat. 42, 49 U.S.C. § 10706 (b). See Appendix, p. A8) The creation of an antitrust exemption for certain rate-making activities implies that rate-making activities outside the exemption are actionable. *United States* v. *Borden Co.*, 308 U.S. 188 (1939); *Carnation Co.* v. *Pacific Westbound Conference*, 383 U.S. 213 (1966).

The regulatory authority of the ICC was also drastically curtailed in 1980, when the Staggers Rail Act was passed, 94 Stat. 1895, 49 U.S.C. § 10101 *et seq.* That Act authorized private contract railroad rates, removed such

rates from the jurisdiction of the ICC and made them subject to the antitrust laws. 94, Stat. 1908, 49 U.S.C. § 10713. The effect is that railroad shippers cannot now contest the reasonableness of those rates before the ICC, even if the rates are collusively set. See Kahn, *Keogh's Kaput,* 48 I.C.C. Practitioner's Journal 478 (1982). The Staggers Act applies only to railroads, but nevertheless exemplifies the shift in Congressional policy toward limiting regulated carriers' antitrust exemption.

This Court's 1966 interpretation of the Shipping Act of 1916, 75 Stat. 762, 46 U.S.C. §§ 801-842, is another example. The Shipping Act exempts from antitrust liability rate-setting agreements approved by the Federal Maritime Commission, just as the Interstate Commerce Act exempts such agreements if they are approved by the ICC. A private party's right to recover treble damages under the antitrust laws for conduct which violates the Shipping Act is "entirely collateral" to rights available under the Act. *Carnation Co.* v. *Pacific Westbound Conference,* 383 U.S. 213, 222, 224 (1966). Now that ICC purview over anticompetitive conduct has been carefully circumscribed in the Interstate Commerce Act, rights arising under the antitrust laws should also be considered collateral to rights contained in the Interstate Commerce Act.

In *Keogh,* the Court also believed that the recovery of antitrust damages would be contrary to the regulatory goal of preventing unjust discrimination. 260 U.S. at 163. The Court stated that it was "highly improbable" that the juries and courts who would hear the cases of various shippers would grant the same relief. Non-uniform rates would operate to give preference to some shippers over others. This analysis is no longer valid for three reasons.

First, the Court specifically rejected this argument in *Carnation Co.* v. *Pacific Westbound Conference, supra.* There, respondent argued that antitrust damages would be contrary to the policy against discrimination contained in the Shipping Act of 1916. The Court stated that "[w]e believe that Congress was concerned with assuring equality of treatment by the conferences, not with equality of treatment by juries in collateral proceedings." 383 U.S. at 219 n.3. Second, the problem of non-uniform recoveries is solved by Rule 23, *Federal Rules of Civil Procedure.* Rule 23 states that class actions are appropriate where "(1) the prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications. . . ." Third, the concern for equality among competing shippers does not apply to the instant case. Minsky and the class he seeks to represent are ultimate consumers of defendants' services, and compete with neither defendants nor each other. As consumers, they are nonetheless entitled to damages for violations of the antitrust laws. *Reiter* v. *Sonotone Corp.,* 442 U.S. 330 (1979). Thus, the Court's concern in *Keogh* that the recovery of antitrust damages would be contrary to the Interstate Commerce Act is inapplicable to Minsky's action.

Another reason the Court gave for disallowing the private antitrust action in *Keogh* was that proof of antitrust damages would require input from the ICC, which could not be obtained in a lawsuit. The Court stated that the plaintiff would have to prove that, but for the illegal conspiracy, he would have been charged a lower rate. This hypothetical lower rate would have to conform to the Act to Regulate Commerce, reasoned the Court, but only

the ICC could make such a determination. Subsequent to *Keogh,* however, this Court has abandoned the notion that proof of antitrust damages requires regulatory input. Courts may determine what rates the plaintiff would have been charged but for the conspiracy. *Carnation Co.* v. *Pacific Westbound Conference, supra,* 383 U.S. at 222.

Finally, in *Keogh* the Court stated that Keogh could not recover damages because the damages alleged were "purely speculative." 260 U.S. at 164-65. Since *Keogh,* courts have become more lenient in their treatment of antitrust damages. In *Story Parchment Co.* v. *Paterson Parchment Paper Co.,* 282 U.S. 555, 565 (1931), and *Bigelow* v. *RKO Pictures, Inc.,* 327 U.S. 251, 265 (1946), the Court stated that defendants should bear the risk of uncertainty which their conduct produces. In light of the modern judicial attitude toward antitrust damages, plaintiff should be given at least an opportunity to prove properly recoverable damages.

CONCLUSION

The defendants engaged in a criminal price-fixing conspiracy, and nothing within the Interstate Commerce Act exempts that conduct from antitrust scrutiny. Plaintiff and the class of consumers he seeks to represent should be allowed to sue for damages for injuries inflicted by the price-fixing conspiracy.

This petition for a writ of certiorari should be granted.

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APPENDIX

APPENDIX

Name of Presiding Judge,
Honorable Getzendanner

Cause No. 81 C 5165 Date May 24, 1982

Title of Cause
Minsky v. Auto Driveaway Co.

Brief Statement of Motion
Defendants' Motion to Dismiss

The court grants defendants' motion to dismiss for faliure to state a claim upon which relief may be granted. (Defendants erroneously entitle their motion one to dismiss for want of jurisdiction, cf. McLain v. Real Estate Board of New Orleans, Inc., 100 S.Ct. 502, 510 (1980).) Plaintiff has not and cannot show that he has any legal right to a rate lower than that approved by the ICC. In the absence of a legal right, there is no legal injury. See Keogh v. Chicago & N.W. Ry., 260 U.S. 156 (1922), and Georgia v. Pennsylvania R. Co., 324 U.S. 439 (1944); Monticello Heights, Inc. v. Morgan Drive Away, Inc., [1974] CCH Trade Cases ¶75,282 (S.D.N.Y. 1974). Plaintiff's cited cases, dealing with the state action exemption to the antitrust laws, are inapposite here.

Docketed May 26, 1982

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Argued December 7, 1982

April 18, 1984.

Unpublished Order Not To Be Cited Per Circuit Rule 35

Before

Hon. William J. Bauer, Circuit Judge
Hon. Richard A. Posner, Circuit Judge
Hon. Walter E. Hoffman, Senior District Judge*

MORTON L. MINSKY, Individually and on behalf of all others similarly situated,

Plaintiff-Appellant,

No. 82-1972 vs.

AUTO DRIVEAWAY COMPANY, et al,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 81 C 5165
Susan Getzendanner, Judge.

ORDER

Plaintiff, Minsky, appeals from the order of the District Court dismissing plaintiff's complaint for failure to state a claim. In this appeal, plaintiff contends that the District Court's reliance on *Keogh* v. *Chicago & Northwestern Railway Co.*, 260 U.S. 156 (1922), in dismissing the complaint is illfounded.

The corporate defendants, Auto Driveaway Company (Auto Driveaway), AAAcon Transport, Inc. (AAAcon),

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* Honorable Walter E. Hoffman, Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

and Nationwide Auto Transporters, Inc. (Nationwide), provide casual automobile driveaway services and are subject to the juurisdiction of the Interstate Commerce Commission (ICC). The individual defendants are current or former employees of the corporate defendants. The companies transport vehicles by having them driven, under their own power, by employed "casual" drivers who are non-professional drivers retained from among the general public.

In 1974, the companies submitted a proposal for collective ratemaking to the ICC, *see* 49 U.S.C. § 10706, which was finally denied in January 1979. During the period of 1974 to 1979, each of the companies submitted individual rates to the ICC which became effective thirty days after submission without any affirmative action on the part of the ICC.

On September 29, 1980, a federal grand jury indicted the three companies, charging that they had engaged in a combination and conspiracy to fix rates for the casual automobile driveaway services in violation of the antitrust laws. AAAcon plead *nolo contendere* to the charges and was fined $150,000, Nationwide plead guilty and was fined $100,000, and Auto Driveaway was found guilty by a jury and fined $100,000.

On September 14, 1981, plaintiff brought this class action against defendants based on the same conduct which was the subject of the criminal indictment. Plaintiff is seeking treble damages for violation of sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§1, 2, and section 4 of the Clayton Act, 15 U.S.C. § 15. On November 30, 1981, defendants filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b) on the grounds that the ICC had exclusive jurisdiction over any dispute related to rates and that defendants' compliance with the published tariffs was a defense to plaintiff's claims. On May 24, 1982, the District Court dismiss the complaint for failure to state a claim upon which relief my be granted. In a minute order the court stated:

> The court grants defendants' motion to dismiss that he has any legal right to a rate lower than be granted. . . . Plaintiff has not and cannot show that he has any legal right to a rate lower than that approved by the ICC. In the absence of a legal right, there is no legal injury. See Keogh v. Chicago & N.W. Ry., 260 U.S. 156 (1922), and Georgia v. Pennsylvania R. Co., 324 U.S. 439 (1944) [sic]. . . .

Keogh involved an antitrust action by a shipper against rail carriers. The rail carriers established uniform rates which were then submitted to the ICC and approved after hearings. The Supreme Court, in a unanimous decision, held that the plaintiff could not recover under the antitrust laws. Justice Brandeis, writing for the Court, stated:

> [U]nder the Anti-Trust Act, a combination of carriers to fix reasonable and non-discriminatory rates may be illegal; and if so, the Government may have redress by criminal proceedings under § 3, by injunction under § 4, and by forfeiture under § 6. . . . It does not, however, follow that Keogh, a private shipper, may recover damages under § 7 because he lost the benefit of rates still lower, which, but for the conspiracy, he would have enjoyed. . . .
>
> A rate is not necessarily illegal because it is the result of a conspiracy in restraint of trade in violation of the Anti-Trust Act. What rates are legal is determined by the Act to Regulate Commerce. . . . If the conspiracy here complained of had resulted in rates which the Commission found to be illegal because unreasonably high or discriminatory, the full amount of the damages sustained, whatever their nature, would have been recoverable in such proceedings. . . .
>
> The legal rights of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside, this

> rate is made, for all purposes, the legal rate, as between carrier and shipper. The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier.

260 U.S. at 161-63.

The sole question in this appeal is the continued validity of *Keogh*. Plaintiff argues that *Keogh* is no longer valid law and thus dismissal was improper.

Plaintiff's argument that *Keogh* can no longer be followed is unconvincing. Even though the Supreme Court has not recently expressly reaffirmed the principles established in *Keogh*, it has favorably referred to *Keogh* on several occasions. *See, e.g., McLain* v. *Real Estate Board of New Orleans, Inc.*, 444 U.S. 232 (1980); *Hawaii* v. *Standard Oil Co.*, 405 U.S. 451 (1972). This Circuit also has continued to recognize *Keogh* as valid law. *See Board of Trade* v. *Interstate Commerce Commission*, 646 F.2d 1187, 1193 (7th Cir. 1981); *Aero Trucking, Inc.* v. *Regal Tube Co.*, 594 F.2d 619, 622 (7th Cir. 1979). *See also Indiana Harbor Belt Railroad Co.* v. *United States*, 510 F.2d 644 649 (7th Cir.), *cert. denied*, 422 U.S. 1042 (1975); *Danna* v. *Air France*, 463 F.2d 407, 409 (7th Cir. 1972). Likewise other Circuits have continued to recognize *Keogh* for the principles it established. *See City of Groton* v. *Connecticut Light & Power Co.*, 662 F.2d 921, 929 (2d Cir. 1981); *Essential Communications Systems, Inc.* v. *American Telephone & Telegraph Co.*, 610 F.2d 1114, 1121-22 (3d Cir. 1979); *Cleary* v. *Chalk*, 488 F.2d 1315, 1324, n.63 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 938 (1974). *See also Chicago & North Western Railroad Co.* v. *Union Packing Co.*, 514 F.2d 30, 33 (8th Cir 1975).

Keogh is still valid law and it was proper to apply it to this case. A tariff that is filed with the ICC and which becomes effective is the legal rate and establishes the legal rights of the parties until it is determined by

the ICC to be unreasonable or discriminatory. A customer of a carrier, who was charged the filed rate, *cannot* maintain an antitrust suit against the carrier for an alleged conspiracy in setting the rate.

For the reasons discussed above, the order of the District Court dismissing plaintiff's complaint for failure to state a claim upon which relief may be granted is AFFIRMED.

STATUTES INVOLVED

Section 4 of the Clayton Act, 38 Stat. 731, 15 U.S.C. § 15, states:

> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district court in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Section 5a of the Reed-Bulwinkle Act of June 17, 1948, 62 Stat. 472, 49 U.S.C. § 5b, states:

> § 5b. Agreements between carriers
>
> • • •
>
> Application to Commission for approval of agreements; rules and regulations
>
> (2) Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, under such rules and regulations as the Commission may prescribe, apply to the Commission for approval of the agreement, and the Commission shall by order approve any such agreement (if approval thereof is not prohibited by paragraph (4), (5), or (6) of this section) if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (9) of this section should apply with respect to the making and carrying out of such agreement; otherwise the application

shall be denied. The approval of the Commission shall be granted only upon such terms and conditions as the Commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this paragraph.

* * *

Relief from operation of antitrust laws

(9) Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is not prohibited by paragraph (4), (5), or (6) of this section, relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

Section 5a of the Interstate Commission Act, 90 Stat. 42, 49 U.S.C. § 10706(b), states:

(2) As provided by this subsection, a motor common carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may enter into an agreement with one or more such carriers concerning rates (including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them. Such agreement may be submitted to the Commission for approval by any carrier or carriers which are parties to such agreement and shall be approved by the Commission upon a finding that the agreement fulfills each requirement of this subsection, unless the Commission finds that such agreement is inconsistent with the transportation policy set forth in section 10101(a) of this title. The Commission may require

compliance with reasonable conditions consistent with this subtitle to assure that the agreement furthers such transportation policy. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, and the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to parties and other persons with respect to making or carrying out the agreement.